

Appl. No. 10/810,240
Amdt. Dated 2 May 2005
Reply to Office action of 4 February 2005

Via Facsimile no.: (703) 872-9306

REMARKS/ARGUMENTS

The Applicant has amended claims 1, 4, and 13 and has canceled claims 10 and 21. Thus, claims 1-9 and 11-20 are currently pending in the application. No new matter has been added. Applicant notes that claim 21, originally presented in the Amendment filed 24 November 2004, was not addressed by the Examiner in the Office action mailed on 4 February 2005. Applicant, however, has canceled claim 21 in the present Amendment.

The Examiner rejected claims 1-3 and 5-20 under 35 U.S.C. § 102(b) as being anticipated by United States patent no. 5,701,998 issued to Perry et al. (the "Perry reference"). Applicant respectfully traverses this rejection for at least the following reasons.

Independent claim 1, from which dependent claims 2, 3, and 5-17 depend, has been amended to require that the locking member comprises "a first end disposed at said sidewall, a second end disposed opposite said first end, a ramp surface disposed between said first end and said second end, and an engaging surface disposed at said second end for locking the engageable surface of the post within said post-receiving opening." The Perry reference discloses a cover for a baseball bat in which a cover includes a sidewall and one of the following mechanisms for releasably grasping the head end of a bat:

- (1) four circumferentially positioned, semi-spherical latching balls 18 (see Figs. 2A and 2B);
- (2) a ring 20 of relatively stiff rubber (see Figs. 3A and 3B); and
- (3) a pair of opposed synthetic material, U-shaped latches 24 (see Figs. 4A and 4B).

None of these mechanisms comprises the combination of the claimed ramp surface extending between a first end and a second end and an engaging surface disposed at the second end. As disclosed in the specification of the present application, the claimed configuration provides an angled surface for sliding over an engageable surface of a post and an engaging surface for locking the post within the post-receiving opening of the cap. See, e.g., page 4, lines 5-18. Thus, amended claim 1 provides a cap for which a post can be slid over the ramp surface, but for which the engaging surface prevents the post from being removed from the cap.

The Perry reference, however, fails to disclose, teach or suggest the claimed combination of claim 1 of a ramp surface extending between a first end and a second end and an engaging surface disposed at the second end. Rather, the Perry reference discloses mechanisms for which

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a head end of a bat may be inserted into the cover and for which "the cover may be easily removed from the bat by simply pulling the bat and the cover apart. The ring of relatively stiff rubber 20 identified by the Examiner, for example, extends perpendicularly from the sidewall of the cover and does not provide the claimed ramp surface. The semi-spherical latching balls 18, the ring of relatively stiff rubber 20, and the pair of U-shaped latches 24 each also provide symmetrical surfaces that allow the cover to be easily inserted onto and removed from the head of the bat. Thus, the Perry reference does not disclose, teach, or suggest the claimed combination of a ramp surface extending between said first end and said second end of the said locking member for receiving the post and an engaging surface disposed at said second end for locking the post within said post-receiving opening. For at least these reasons, Applicant respectfully requests the Examiner to reconsider and withdraw the rejections of claims 1-3 and 5-17, and that claims 1-3 and 5-17 be allowed.

Claim 18, from which claims 19 and 20 depend, requires "a means for preventing said cap from rotating about the post." This limitation is written in means-plus-function format under 35 U.S.C. § 112, sixth paragraph. See, e.g., MPEP § 2181. As such, a *prima facie* case requires a prior art element that "(A) performs the function specified in the claim, (B) is not excluded by an explicit definition provided in the specification for an equivalent, and (C) is an equivalent of the means-(or step-) plus-function limitation." In addition, the Examiner should provide an explanation and rationale as to why the prior art element is an equivalent. See MPEP § 2183.

In the Office action, however, the Examiner merely pointed to ring 22 (see Fig. 3A) without any explanation as to how the ring 22 performs the claimed function or is equivalent to the structure disclosed in the specification. As such, the Examiner has failed to meet the required *prima facie* case of anticipation.

Even if the Examiner had established a *prima facie* case, however, the ring 22 disclosed by the Perry reference fails to perform the claimed function of the means-plus-function limitation. The Examiner points to a ring 22 located at the opening of the cover 10 as a prior art element corresponding to the claimed means-plus-function limitation. The Perry reference, however, describes the ring 22 as serving "to discourage the entry of water, dirt and debris into the interior of the cover when the cover is in place." The Perry reference, however, does not disclose, teach, or suggest that the ring 22 prevents the cap from rotating about the post as required by the claimed invention. In addition, the ring 22 of the Perry reference could not

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prevent the bat from rotating within the cover without preventing the cover from operating as described in the Perry reference. If the ring 22 provided enough force onto the handle of the bay to keep it from rotating within the cover, the same ring 22 would make it difficult or even impossible to insert the larger head of the bat into the cover or remove the head of the bat from the cover. Thus, the Perry reference fails to anticipate claims 18-20. For at least these reasons, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 18-20 and allow claims 18-20.

The Examiner also rejected claims 1-7 and 9-20 as being anticipated by United States published patent application no. 2003/0127638 by Young (the "Young reference"). Applicant respectfully traverses this rejection for at least the following reasons.

Claims 1 and 18, from which claims 2, 3, 5-7, 9-17, 18, and 19 depend, require that the locking member extend inwardly from said sidewall of the cap for engaging the engageable surface of the post. The Young reference discloses a cap that is lockable on a hollow metal fence post. The lock disclosed in the Young reference, however, includes a shaft 26 that extends from a side of the fence post 22 and a finger 28 that is affixed to the shaft 26 and extends towards the cap 18 that sits on the top of the post 22.

The Examiner argues that the finger 28 of the lock disclosed in the Young reference meets the limitation of the "locking member" of claim 1 and extends inwardly from the sidewall of the cap for engaging the engageable surface of the post. The lock disclosed in the Young reference does not extend inwardly from the sidewall of the cap as required by claim 1. Rather, the lock extends from the side of the fence post to which the cap is locked. Thus, the Young reference fails to anticipate the claimed invention. For at least these reasons, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-7, 9, and 11-20, and allow claims 1-9 and 11-20.

CONCLUSION

Applicant has amended claims 1, 4, and 13 and has canceled claims 10 and 21. Thus, claims 1-9 and 11-20 are currently pending in the present application. No new matter has been added. Applicant believes the pending claims are allowable and respectfully requests a timely Notice of Allowance be issued in this case. If the Examiner believes that a telephone conference

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may be helpful in resolving any remaining issues, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted this 2nd day of May 2005.



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Attachments

cc: Client
Docketing